

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDEN WILLIE ISEL,
Petitioner,
v.
JEFF LYNCH,
Respondent.

Case No. 2:24-cv-00821-JDP (HC)

ORDER

GRANTING PETITIONER'S
APPLICATION TO PROCEED *IN FORMA*
PAUPERIS AND DIRECTING THE CLERK
OF COURT TO ASSIGN A DISTRICT
JUDGE

ECF No. 5

FINDINGS AND RECOMMENDATIONS

THAT THE PETITION BE DISMISSED AS
SUCCESSIVE AND UNAUTHORIZED

ECF No. 1

Petitioner, a state prisoner, brings this action under section 2254. ECF No. 1. It appears, for the reasons stated below, that this petition is successive and unauthorized. I will recommend this action be dismissed on that basis. If petitioner has, in fact, obtained authorization, or if some other basis justifies retraction of the recommendations, he may indicate as much in his objections. I will grant petitioner's application to proceed *in forma pauperis*. ECF No. 5.

The petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it "plainly appears" that the

petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

Petitioner filed this petition challenging convictions for attempted murder with premeditation and first-degree murder handed down in San Joaquin County superior court. ECF No. 1 at 2. It appears that these convictions were previously challenged in a federal habeas petition that was filed in this court on August 22, 2022, which was denied on the merits. *See Iseli v. People of the State of California*, No. 2:22-cv-01483-TLN-EFB, ECF Nos. 1, 23, & 31. Accordingly, this petition is successive. *See Cooper v. Calderon*, 274 F.3d 1270, 1273 (9th Cir. 2001) (“Generally, a new petition is ‘second or successive’ if it raises claims that were or could have been adjudicated on their merits in an earlier petition.”). Under 28 U.S.C. § 2244(b)(3)(A), a petitioner may not bring a second or successive habeas petition seeking the same, previously denied relief unless he obtains proper authorization to do so from the Court of Appeals. *Id.* (“Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.”). The current petition does not indicate that such authorization has been obtained. Accordingly, I recommend it be dismissed. As stated above, if petitioner does have authorization from the court of appeals, or if some other ground justifies this case proceeding, he may state as much in his objections to these recommendations.

Accordingly, it is hereby ORDERED that:

1. Petitioner’s application to proceed *in forma pauperis*, ECF No. 5, is GRANTED.
2. The Clerk of Court is directed to assign a district judge to this action.


Further, it is RECOMMENDED that the petition, ECF No. 1, be DISMISSED as successive and unauthorized.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of service of these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Any such document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations,” and any response shall be served and filed

1 within fourteen days of service of the objections. The parties are advised that failure to file
2 objections within the specified time may waive the right to appeal the District Court's order. *See*
3 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
4 1991).

5
6 IT IS SO ORDERED.

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8 Dated: August 29, 2024


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE